



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher
Associate Members:
Jaime Doherty
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES March 26, 2015

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Pike House (temporary town hall). Present at the meeting were Len Dunn, Jaime Doherty, Gerald Kutcher, and Dianne Bartalamia (late arrival). Also in attendance was Melissa Johnson, Recording Secretary.

Approval of Meeting Minutes – February 26, 2015

MOTION: Mr. Kutcher made the motion to approve the February 26, 2015 meeting minutes as presented; seconded by Mr. Dunn and the motion carried 4-0.

NEW HEARINGS

Richard Martel for Martel Realty, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 65' x 100' one-story structure as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned Heavy Industrial.

Present was Matt Hammer of Robert Gill Associates and the applicant, Mr. Martel. Mr. Hammer provided the members with a copy of a rendering of the site and explained that they are requesting a variance for the side and front yard setbacks. Mr. Hammer explained that they will be requesting a continuance based on a discussion that just occurred with the abutters by moving the building to satisfy some of their concerns. Mr. Dugan asked if by moving the building the request for the front setback will be changed and Mr. Hammer confirmed this. Mr. Martel explained that he has a petition signed by the abutters in agreement with the project with the exception of two abutters who have expressed concerns with noise. Mr. Martel explained that 6 years ago he constructed a building and the neighbors have said that since that time the noise "bounces" off the building and it has increased the noise. The applicant was proposing a new building on the same side and the neighbors feel this will increase the noise even further. As a result, they are proposing to turn the proposed building onto Kernwood in an effort to block the noise going to the abutters. The lot on the James side is zoned heavy industrial and no one resides there.

Mr. Hammer reviewed the plans and showed the original proposed location of the new building as well as the changes that they will be making to the plans regarding the location of the building.

Mr. Dugan asked why they need to push the building so far back towards Kernwood that it would require a variance and Mr. Hammer explained that the property is surrounded by roads on three sides. As a result, they are required to maintain 50 feet on those three sides and this would limit the ability of the property in which Mr. Martel intends to use it for. Mr. Martel explained that the goal is keep the traffic off of the side streets by having only one entrance off the main road. The variance is required as they need room for the size of trucks they have. Mr. Hammer noted they are also proposing an entire screened buffer around the property.

Ms. Bartalamia noted that the original request was for 20 feet and asked what the request will be with the changes and Mr. Martel noted 15 feet. Ms. Bartalamia noted that it would be even greater than what is currently being presented and asked if two variances will still be needed. Mr. Hammer confirmed that two variances would still be needed. Mr. Martel requested time to lay out the plan and see how it would flow with the proposed changes prior to providing any distances.

Mr. Martel noted that he grew up in this neighborhood, knows the neighbors, and has spoken to them about the project. Mr. Martel would like to see the neighbors happy with the project.

Ms. Bartalamia asked what the building will be used for and Mr. Martel explained crane repair. Ms. Bartalamia asked if Mr. Martel also owns the adjacent property and Mr. Martel confirmed this.

Mr. Dugan noted that the Board is in receipt of correspondence regarding the location of dumpsters. Mr. Hammer confirmed that the applicant has also received this correspondence and will incorporate this into the plan.

Mr. Dugan opened the hearing to the public.

David Weaver of 126 Lowell Street came forward and noted that he would not be opposed to the building being 15 feet from Kernwood as well as the installation of a sound barrier.

Mr. Hammer noted that they will re-notify the abutters of the changes to the plan prior to the next meeting.

MOTION: Mr. Dunn made the motion to continue Richard Martel for Martel Realty, LLC for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 65' x 100' one-story structure as shown on plans filed with this Board. Said property is located at 105 Lowell Street, Assessor's Map 3, Lot 96, zoned Heavy Industrial to April 30, 2015 at 6:30 p.m.; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER

TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc. for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District.

Present was Attorney John Smolak on behalf of TMC CF New England, LLC, and Phil Henry of Civil Design Group. Attorney Smolak explained the applicant is seeking setback variances in connection with the proposed project; which is a proposed convenience store with gas station. Attorney Smolak noted that they were before the Board in October and requested three separate variances. Attorney Smolak showed the plan that the Board approved in October and noted that the site is approximately 1.88 acres in size and is currently vacant. The site is bounded by Main Street/Route 38 to the South and the railroad right of way to the northwest. Old Main Street is located to the north with residences, and there are commercial uses on the easterly side of the property. The site is located within a commercial district and is also within the interstate overlay district within which a gas station service station is allowed by special permit of the Planning Board and a retail store is permitted by right.

The Board did grant the setback variances for the project in October which included a proposed convenience store located to the northwest portion of the site as well as two rows of gas pumps with an overhead canopy. The board granted the variance as requested and the decision has since been appealed by an abutter. As a result, the applicant is now proposing a design alternative which they feel creates a greater buffer for the residents. The proposal is to flip the building to the right side of the site which allows them to eliminate a curb cut reducing it from 2 to 1, as well as straighten out the four-way traffic signal to go straight across from Walmart. The proposal involves the construction of a 4,956 square foot retail convenience store; which will be colonial design. The site includes the installation of 6 gas dispensers over which will be an overhead canopy with a state of the art fire suppression system. The project will include a total of 25 parking spaces as required. The relief being requested is 30.3 feet front setback along Old Main Street for the convenience store where 50 feet is required, 34.8 foot front setback for the canopy along Old Main Street where 50 is required, and 42.1 foot front setback for the canopy along Main Street where 50 feet is required.

Mr. Dugan asked how far the pump is from Main Street. Mr. Henry explained that the pump itself complies; it is the canopy that would be 42.1 feet. The pump is approximately 52.1 feet from Main Street. Mr. Dugan asked what the elevation difference is from the pavement on Old Main Street to the pavement of the proposed project and Mr. Henry noted approximately 15 feet and the proposed retaining wall is also approximately 15 feet.

Attorney Smolak showed the members a photograph simulation of the existing and proposed site conditions for the front and rear and noted that they did have a neighborhood meeting last Tuesday and received input for the site plan with the Planning Board

Mr. Dugan asked where the appeal stands and Attorney Smolak noted that it is still pending. Mr. Dugan asked if they have taken it upon themselves to redo the print and Attorney Smolak confirmed this and explained that they still have the original variances that were approved in

October. Mr. Dugan requested to see the plans that were approved in October and Attorney Smolak provided this.

Mr. Dugan opened the hearing to the public

Dan Connor of 220 Old Main Street came forward and noted that he feels the original plan was fine and he was in favor of the original plan. Mr. Connor feels this plan is worse and goes in the wrong direction. Mr. Connor noted that since the chicken coop was removed the headlights from Walmart shine into the homes on Old Main Street. Mr. Dunn asked if this is something the retaining wall would help with and Mr. Connor noted that the wall would have to be "60 feet tall". Mr. Dugan explained that they are proposing a 16 foot retaining wall with a 6 foot fence on top.

Tony Cerquiera of 232 Old Main Street came forward and noted that he lives next to Mr. Connor and agrees the lights from Walmart have gotten worse and feels that the original plan was better. Mr. Dugan encouraged Mr. Cerquiera to go to the Planning Board to express these concerns as they can put restrictions in place with regards to lighting, fence heights, etc. Mr. Cerquiera asked what the height of the lights on the gas island will be and Mr. Henry explained that the lighting fixtures are under the canopy and you cannot see an actually lighting fixture from the outside. Mr. Cerquiera asked what type of trees would be planted. Mr. Henry explained that typically they plant evergreen trees and noted that they would be willing to work with the abutters on placement and types of plantings during the Planning Board process.

Paul Pereira of 274 Old Main Street came forward noted that he is also dealing with the light spillover from the Walmart traffic. The building reversed buffers the lights a little for him; however, he still does not feel this is the right sight for this. Mr. Pereira expressed concerns with the location of the vacuums as well as with chemicals entering onto the neighboring properties. Mr. Pereira requested the Board deny the request based on the fact that this project has so many detriments on the health of this neighborhood.

Mr. Henry noted that the air vacuums have been moved further north under the new proposal and that the gas dispensers are also 40 feet further north from the original proposal. The underground storage tanks are 130 feet farther north than the original proposal. In addition, they have reduced a vehicular access curb cut which reduces interaction with vehicles and pedestrians alike. The southerly right in was pushed further south which allowed them to create for a more efficient flow. The signalized entrance lines up 90 degrees with the existing intersection. The new plan also allows for more parking spaces along with front of the convenience store therefore reducing potential interaction between walking away from vehicles. Mr. Henry discussed storm water and noted the rear portion of the site was to be green space and used for storm water and noted that the entire site slopes from front to back towards Old Main Street. They did subsurface exploration with the town engineer and were able to design a basin that catches all of the runoff from the site without having a drainage connection onto Old Main Street. The storm water would be infiltrated into the ground. Mr. Dugan asked if this was done with the original print. Mr. Henry confirmed this and noted the new layout still allows for the same drainage design.

Mr. Dunn asked if the size of the canopy can be reduced and Mr. Henry explained that they would have to reduce the distance between the dispensers; they are currently at 27 feet and typically they have a 30-35 foot spacing.

Attorney Smolak discussed the lighting that is used for gas pumps and how it has been improved to LED lightings that do not overflow onto the street and noted that they will also be presenting this to the Planning Board.

Mr. Dugan noted that he has an issue with granting another variance on a property that has a variance that was previously issued and is under appeal. Mr. Dugan expressed concerns with the Board setting precedence by issuing variances for two different plans for the same property.

Mr. Dunn asked what happens in the event the applicant wins the appeal. Attorney Smolak explained that they would likely go with the plan being presented tonight.

Mr. Dugan suggested continuing this matter until after the appeal is heard and Attorney Smolak noted that the appeal could take a year to resolve and he has never heard of a Board doing this.

Mr. Dunn suggested continuing the matter to seek the guidance of town counsel as to whether variances can be issued for two different plans for the same property; one of which is under appeal.

MOTION: Mr. Kutcher made the motion to continue TMC CF New England, LLC for Marc P. Ginsburg & Sons, Inc. for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at 265 Main Street, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District to April 30, 2015 at 6:30 p.m.; seconded by Mr. Dunn and the motion carried 3-0.
DUGAN, KUTCHER, DUNN

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

MOTION: Mr. Kutcher made the motion to adjourn; seconded by Mr. Dunn and the motion carried 5-0.

Approved: 4/30/15

List of documents for 3/26/15 Agenda
Documents can be located at the Community Development Office

Approval of Minutes – February 26, 2015

NEW HEARINGS

- 6:30 P.M.** **Richard Martel for Martel Realty, LLC** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for insufficient front yard setback to construct a 65' x 100' one-story structure as shown on plans filed with this Board. Said property is located at **105 Lowell Street**, Assessor's Map 3, Lot 96, zoned Heavy Industrial.
- *Application packet date 3/2/15.*
- 6:30 P.M.** **TMC CF New England LLC for Marc P. Ginsburg & Sons, Inc.** for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed redevelopment of a vacant lot into a retail gas station, convenience store, landscaping, parking and other improvements as shown on plans filed with this Board. Said property is located at **265 Main Street**, Assessor's Map 22, Lot 13, zoned Commercial/Interstate Overlay District.
- *Application packet date 2/18/15.*